STRAITS SETTLEMENTS LAW REPORTS.

PUBLISHED BY AUTHORITY.

[ORIGINAL CIVIL JURISDICTION]
MILLS, J.
January 22, 1934.

IN THE ESTATE OF EMBI BIN HAJI ABDULLAH DECEASED.
MOHAMED BIN HAJI OMAR
vs.
ZAINAB BINTE MOHAMED SYED (w).

[SINGAPORE ORIGINATING SUMMONS No. 116 of 1931]

Practice—Amendment of Judgment or order.

The Court has no power to amend or alter a Judgment or order which has been duly passed and entered except (i) where there has been an accidental slip in the wording, or (ii) where the Judgment or order does not express the manifest intention of the Court. In other cases there may be a remedy by way of appeal from the Judgment, or by way of bringing a fresh action to set aside the Judgment.

Adjourned Summons.

In this case the Plaintiff claimed to be an equitable mortgagee by deposit of title deeds of property belonging to a deceased person. He commenced proceedings against the Defendant as the administratrix of the deceased, in which proceedings he claimed a declaration that he was an equitable mortgagee of the property, an account, foreclosure and other relief.

The facts were that the Defendant was the widow of the deceased and she had applied for a grant of Letters of Administration which grant had been made to her but owing to difficulty in finding sureties for the Administration bond she had not actually extracted the grant of Letters of Administration.

The Plaintiff duly served the Defendant with all the proceedings. She did not oppose the proceedings and the plaintiff duly obtained first an order for foreclosure *nisi* and later on the 7th December, 1931 an order for foreclosure absolute.

In January, 1934 the Plaintiff wished to take other proceedings in connection with his debt and considering that he was debarred by his foreclosure decree, he applied by Summons in Chambers to discharge the two orders for foreclosure *nisi* and foreclosure absolute, on the ground that they had been wrongly obtained and were ineffective, the Defendant not having extracted her grant of Letters of Administration at the times when such orders were made, and there being no order for representation.

Mallal for Plaintiff. The order was ineffective as the estate of the deceased was not bound and therefore did not give the Plaintiff the proper relief and therefore should be discharged.

Laycock for Defendant. The Court has no power to amend or alter a Judgment which has been duly passed and entered except under the slip rule, or where the Judgment or order does not express the intention of the Court. Possibly the Plaintiff might have appealed, or he might have brought a fresh action to set aside the original Judgment or order, though this is not admitted. The Court has no jurisdiction to grant this application. He referred to *Ainsworth* v. *Wilding*, (1896) 1 Ch. 677; *MacCarthy* v. *Agard*, (1933) 2 K.B. 417; *Hulbert* v. *Thurston*, (1931) W. N. 171; *Green* v. *Weatherell*, (1929) 2 Ch. 213.

Mallal (in reply). The Court has an inherent jurisdiction to discharge a useless order.

Cur. Ad. Vult.

MILLS, J. delivered an oral Judgment dismissing the application with costs.

Application dismissed.

Solicitors for the Plaintiff—*Mallal & Namazie.*

Solicitors for the Defendant—*Braddell Brothers.*

THE END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.

[ORIGINAL CIVIL JURISDICTION]
N. A. WORLEY, COMMR.
February 8, 1934.

R. SALDANHA.....Applicant.
vs.
EASTERN MANUFACTURING CO.,
Respondents.

[SINGAPORE WORKMEN'S COMPENSATION CLAIM No. 14 of 1933].

Workmen's Compensation—workman leaving duty—acting contrary to prohibition—accident—hand caught in rolling machine—resulting injuries—Workmen's Compensation Ordinance, 1932, Section 3 (2), (b), (ii).

The applicant, who was employed as a "Spotter," sustained injuries as a result of his hand being caught in a rolling machine. It was no part of his duty to assist in the work of rolling. At the time of the accident he was found wearing gloves contrary to a regulation in the factory which prohibited the wearing of gloves or long sleeves by men working on the machine.

Held, that the claim was not maintainable on the grounds (1) that the accident did not arise out of the employment and (2) that the applicant was acting in wilful breach of an express order framed for his safety.

Inquiry before Commissioner of Workmen's Compensation.

The applicant was employed as "Spotter," his job being to hold the edges of a steel plate together whilst it was being "spotted" preparatory to welding. Fifteen feet away from the spotting bench was the rolling machine in which

the plates were rolled into cylindrical form. The applicant's hand was caught in the rolling machine and jammed between the rollers resulting in the loss of the first phalanx of the thumb and injuries to two fingers. The applicant contended that he was at the rolling machine for the purpose of adjusting it and that the machine was moving under power at the time of the accident. It appeared that the applicant was wearing gloves and that there was a rule in the factory prohibiting the wearing of gloves by any workmen working at the rolling machine. Liability was disputed on the ground that the applicant was not employed at the rolling machine and that, therefore, the accident did not arise out of his employment and even if it had it was directly attributable to the wilful disobedience by the workman of an express order.

Spencer Wilkinson for the Respondents.

Either the applicant was wearing gloves while on the rolling machine which was prohibited or he was wearing gloves for spotting and he ought not to have gone near the rolling machine with gloves on. From the slight injuries sustained by him it may be inferred that the machine was not working under power. As to "serious and wilful misconduct" see *Willis on Workmen's Compensation*, p. 4. The Ordinance has taken the result of the cases prescribing three types of serious and wilful conduct, Section 3 (2) (b), (i). (ii) & (iii). As to section 3 (2) (b) (ii) cf. *Willis*, p. 109 last paragraph. The clause ought to be read as disjunctive. The onus is on the applicant to shew that the accident arose "in the course of the employment" (*Willis*, p. 82). As to prohibited acts taking a workman outside the sphere of his employment see *Moore* v. *Donnelly*, (1921) 1 A.C. 329. The Ordinance has omitted section 1(2) of the English Act passed as a result of this case. A workman is not entitled to compensation for injuries suffered while doing something outside the scope of his duties. He referred to *Reed* v. *Gt. Western Rail Co.*, (1909) A.C. 31; *Lancashire & Yorkshire Rail Co.*, v. *Highley*, (1917) A.C. 352; *Hopley* v. *Pool & ors.*, 8 B.W.C.C. 512; *Fairhurst* v. *Hollingwood & Screw & Rivet Co.*, (1923) 129 L.T. 683; 16 B.W.C.C. 168 A.C., and *Thames* v. *Ocean Coal Co.*, (1933) A.C. 100.

Bannerjea for the Applicant in reply.

The applicant assisted at the rolling machine. There were no express orders against mutual assistance amongst workmen.

The Commissioner gave oral judgment dismissing the claim.

N. A. WORLEY, COMMISSIONER—I accept the version of this accident given by the witnesses called for the respondents, as it seems to me more in accordance with the facts. I am disposed to agree that if the machine had been working under power at the time of the accident as the applicant alleged, his injuries would have been far more serious. I also accept the evidence of the witness Hogan that he had expressly warned the applicant against the danger of sitting on the rolling machine.

I find that it was not part of the applicant's employment to assist in the work of rolling and that the applicant had no occasion in the course of his work to go near the rolling machine. I hold therefore that the accident did not arise out of or in the course of his employment.

It was argued for the applicant that, even if he was not engaged to work on the rolling machine, yet he went there to assist the men working it and there was evidence that the employees in the factory did at times voluntarily assist each other in their tasks.

I express no opinion as to whether assisting in such a manner would or would not take a workman out of the course of his employment but I think it is clear that when a workman is voluntarily assisting another in a particular kind of work he must obey the regulations applicable to the particular kind of work in which he is assisting. I would not go so far as to say that there was an express prohibition against going near the rolling machine but I find that there was an express prohibition against the wearing of gloves or long sleeves by men working on the machine, and if the applicant came to help at the rolling machine wearing gloves there was clearly a disobedience to the order.

Therefore, if I am wrong in holding that the accident did not arise out of the employment yet I would still dismiss the claim on the ground that the applicant was acting in wilful breach of an express order framed for his safety.

I award costs to the respondents and in view of the large sum claimed I order that the costs be taxed on the lower scale of Schedule C of the Civil Procedure Code.

Claim dismissed.

Solicitor for the Applicant—*S. C. Goho.*

Solicitors for the Respondents—*Donaldson & Burkinshaw.*

[ADMIRALTY JURISDICTION]

GERAHTY, J.

October 31, 1933.

DROUTH.....**Plaintiff.**

vs.

THE SHIP "G. G. PAUL DOUMER"

Defendants.

[SINGAPORE ADMIRALTY SUIT No. 3 of 1931]

Arbitration—written agreement between charterers to submit differences to arbitration—Suit in rem*—stay of proceedings—Ordinance No. 51 (Arbitration) s. 5.*